



February 20, 2023

Via FOIA Portal

Environmental Protection Agency
National FOIA Office
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW (2310A)
Washington, DC 20260

Freedom of Information Act Request: Response to Train Derailment in East Palestine, Ohio

Dear FOIA Officer:

America First Legal Foundation is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans, all to promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. To that end, we file Freedom of Information Act (FOIA) requests on issues of pressing public concern, then disseminate the information we obtain, making documents broadly available to the public, scholars, and the media. Using our editorial skills to turn raw materials into distinct work, we distribute that work to a national audience through traditional and social media platforms. AFL's email list contains over 44,000 unique addresses, our Twitter page has 55,100 followers, the Twitter page of our Founder and President has over 404,000 followers, our Facebook page has 109,000 followers, and we have another approximately 31,600 followers on GETTR.

I. Requested Records

AFL requests the following records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a).

- A. All records of calendars and communications, including emails, to or from Administrator Regan containing the words "East Palestine," "Ohio," "OH," "Norfolk Southern," "train," or "derailment." The timeframe for this request is February 3, 2023, to the date of processing this request.

II. Custodians

- A. Michael Regan, Administrator of the Environmental Protection Agency

611 Pennsylvania Avenue SE #231
Washington, DC 20003

320 South Madison Avenue
Monroe, Georgia 30655

III. Request for Expedited Processing

Processing should occur in strict compliance with the processing guidance in the Attorney General's Memorandum on Freedom of Information Act Guidelines.¹ Given the widely publicized circumstances of this case, the obvious human health and environmental risk posed by the massive uncontrolled release of hazardous substances into the air, water, and ground in and around East Palestine, OH, and the fact that AFL is, as previously described and as repeatedly acknowledged by the Departments of Defense, Justice, Education, Energy, Interior, Health and Human Services, Homeland Security, and the Office of the Director of National Intelligence, as a qualified non-commercial public education and news media requester, disseminating information to the public, AFL is entitled to expedited processing under 5 U.S.C. § 552(a)(6)(E) (compelling need) and/or 49 C.F.R. § 7.31(c) (Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of individuals living in or around East Palestine, OH and/or urgency to inform the public about an actual or alleged Federal government activity). Pursuant to 49 C.F.R. § 7.31(c)(3), AFL hereby certifies that this request for expedited processing is true and correct to the best of AFL's knowledge and belief.

IV. Fee Waiver Request

Per 5 U.S.C. § 552(a)(4)(A)(iii), AFL requests a waiver of all search and duplication fees associated with this request. Because this request concerns the activities and communications of the Administrator on or around the time of this event, the subject matter of the requested records concerns the operations or activities of the government. *See* 40 C.F.R. § 2.107(l)(2)(i). The disclosure is likely to contribute to the understanding of government operations and activities because the requested records will show what the Administrator was aware of, and when he was aware of it beyond what is already known in the public domain. *See* 40 C.F.R. § 2.107(l)(2)(ii). Because AFL is a representative of the news media, as detailed above, AFL will be able to disseminate the requested information to a reasonably broad audience of persons interested in the subject. *See* 40 C.F.R. § 2.107(l)(2)(iii). Because the Administrator has the statutory responsibility to designate and monitor hazardous substances under the Resource Conservation and Recovery Act, 42 U.S.C. § 6912, the Clean Water Act, 33 U.S.C. § 1361, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9602, disclosure will contribute significantly to the public understanding of Federal Government operations and activities. *See* 40 C.F.R. § 2.107(l)(2)(iv). As a non-profit organization, AFL does not have a commercial interest that would be furthered by the requested disclosure. *See*

¹ U.S. DEPT JUST. (Mar. 15, 2022), <https://bit.ly/3zvpxb6>.

40 C.F.R. § 2.107(l)(3)(i). As a representative of the news media, AFL's primary interest in the requested records is to serve the public interest. *See* 40 C.F.R. § 2.107(l)(3)(ii). We are, of course, available to provide additional information in writing or offline in support of this request. If AFL's request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

V. Conclusion

If you have any questions about how to construe this request or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, please do not hesitate to contact me at FOIA@aflegal.org.

Thank you,

/s/ Reed D. Rubinstein

Reed D. Rubinstein

America First Legal Foundation